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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

10 CR 553 (SHS)

5 MENDHER BEJAOUI,

6 Defendant.

7 -----x  
8 New York, N.Y.  
9 April 8, 2013  
2:15 p.m.

10 Before:

11 HON. SIDNEY H. STEIN

12 District Judge

13  
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the  
Southern District of New York

17 BY: RACHEL KOVNER, ESQ.

18 KAN MIN NAWADAY, ESQ.

Assistant United States Attorneys

19 LAW OFFICES OF JOSHUA L. DRATEL, P.C.

Attorneys for Defendant

20 BY: JOSHUA L. DRATEL, ESQ.

LINDSAY LEWIS, ESQ.

21 Also Present: Michael Birley

22 Special Agent, Federal Bureau of Investigation

23 Umami Ansari

24 Paralegal Specialist, U.S. Attorney's Office

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(In open court; jury panel not present)

THE CLERK: United States v. Mondher Bejaoui 10 Crim.  
553. Counsel please state your names for the record.

MS. KOVNER: Good afternoon, your Honor. Rachel  
Kovner and Kan Nawaday for the government. With us at counsel  
table are Special Agent Michael Birley of the FBI and Ummi  
Ansari, a paralegal specialist.

THE COURT: All right. Good afternoon. Welcome.

MR. DRATEL: Good afternoon, your Honor. Joshua  
Dratel with Lindsay Lewis for Mr. Bejaoui. Mr. Bejaoui is  
leer.

THE COURT: I'm sorry, sir?

MR. DRATEL: Mr. Bejaoui is here.

THE COURT: Yes. Welcome, Mr. Bejaoui. Please be  
seated.

We are here for the trial, the United States v.  
Bejaoui. We have a panel waiting downstairs. In the past  
couple of days I've received a couple of motions. There is a  
government motion to preclude cross-examination regarding  
certain convictions of and prior acts of government witnesses.  
And there is a motion by the government to quash a Rule 17(c)  
subpoena a few moments ago. It says it came in at 10:58 this  
morning. I received a submission from the New York State  
Department of Financial Services which shows a copy via e-mail  
to the U.S. Attorney and defense attorney. They seem to say

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1 they are joining in the government's motion, and they also want  
2 an extension of time, I think to produce the materials if the  
3 motion is denied.

4 Now, this morning I also received a submission from  
5 Mr. Bejaoui. It was filed on April 5th. I received a copy of  
6 it today. It's entitled "Memorandum of Law in Support of  
7 Defendant Mondher Bejaoui's Application to Waive his Right to  
8 Counsel and Reassert his Right to Self-Representation." And in  
9 this motion he seeks to represent himself once again. I must  
10 say, it's a very articulate submission, typed, with all the  
11 relevant case law. It's articulate. It's well reasoned. It's  
12 well researched. He focuses on *Faretta*, which of course is the  
13 main case, and he has citations from hearing transcripts and so  
14 forth.

15 I will put a full decision on the record. But right  
16 now, I'm simply going to deny the motion of Mr. Bejaoui. I'm  
17 not going to grant another motion by Mr. Bejaoui to represent  
18 himself. Equivocation acts as a waiver of the right to  
19 self-representation. Mr. Bejaoui has been back and forth in  
20 that. The main case is *Williams v. Bartlett*, 44 F.3d 95, 99  
21 and 100 and 101. And for analysis purposes, this motion by  
22 Mr. Bejaoui is being made prior to the start of the trial. In  
23 other words, the jury has not been sworn in yet. And as I say,  
24 this typewritten letter, motion, of three pages, states that it  
25 was filed April 5 and it was received in my chambers on April

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1 8. And his certification of mailing is dated March 26. So  
2 there's no question that he made that motion prior to the  
3 commencement of trial -- shortly before trial, but nonetheless,  
4 for analysis purposes, prior to trial.

5 All right. I want to bring the jury in, that is, the  
6 venire up. We'll handle the 17(c) issues either at the end of  
7 the trial day today or at the beginning of the tomorrow, along  
8 with the issue of cross-examination.

9 In terms of 17(c), I do need a better sense from  
10 Mr. Dratel of what he is looking for, the use he intends to  
11 make of the documents.

12 Yes, Ms. Kovner.

13 MS. KOVNER: Your Honor, before the jury enters might  
14 we put on the record --

15 THE COURT: Yes, of course, but let's bring the panel  
16 up and assembled outside. We're going to get 50-plus, in other  
17 words, 55 people or thereabouts. We'll see when they come up.

18 Ms. Kovner, sorry.

19 MS. KOVNER: Your Honor, pursuant to the *Lafler* and  
20 *Frye* decisions, we just wanted to put on the record the status  
21 of plea negotiations in this case. We had several  
22 conversations with counsel for the defendant about possible  
23 plea offers. It is our understanding that the defendant  
24 himself was not interested in a plea. Nevertheless, on October  
25 11, 2012, we transmitted a formal plea offer to defense

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1 counsel. We understand that offer was transmitted to defen-  
2 dant. The offer expired on October 30, 2012. And we've never  
3 had any indication that the defendant has interested in a plea.

4 THE COURT: And no other offer was made?

5 MS. KOVNER: That's right, your Honor.

6 THE COURT: Mr. Dratel, when the offer was made in  
7 October, did you notify Mr. Bejaoui of the substance of  
8 whatever the offer was?

9 MR. DRATEL: Yes, your Honor.

10 THE COURT: And I take it he rejected it.

11 MR. DRATEL: Yes, your Honor.

12 THE COURT: Mr. Bejaoui, I take it that's so. Is that  
13 correct?

14 Mr. Bejaoui, is that correct? In other words, you  
15 rejected the plea offer made by the government in October.

16 THE DEFENDANT: I don't know.

17 THE COURT: Pardon me?

18 THE DEFENDANT: I don't know.

19 THE COURT: You don't know.

20 All right. Well, Mr. Bejaoui, the trial is going  
21 begin. I would urge you to participate in the trial and not to  
22 attempt to obstruct it or manipulate it in any way.

23 MR. BEJAOU: This is not I'm manipulating. This is  
24 what you planning to do. You setting the ground so that I  
25 won't have any ground for asserting an appeal. I am

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1 reasserting my right to self-representation. You can't just  
2 deny me the right to represent myself, knowing that I made that  
3 decision, a knowing and explicit decision, that I want to  
4 represent myself. Had the jury convicted me at the end of this  
5 trial, would Mr. Dratel become convicted? No. It's my  
6 defense. I never shared any defense with him. We never talk  
7 about the case because he's too busy to make me, convince me to  
8 plead guilty. He might have some problem, a heavy problem to  
9 defend me, because he does not have any defense. I, the  
10 defense lay with me. I'm the one who has a defense. And I'm  
11 the one, I believe that I will plead that defense for the jury.  
12 You denied the motions on no grounds, Judge.

13 THE COURT: All right. I'm just urging you to  
14 participate in this trial.

15 MR. BEJAOU: I'm not going to participate. And every  
16 time we have a recess, I will not interfere with the jury. I  
17 will not obstruct this trial. But every recess I will remind  
18 you that I'm going to reassert my right to self-  
19 representation. I do not want Mr. Dratel to represent me.

20 THE COURT: All right. Thank you.

21 THE DEFENDANT: Then after he caused the damage, two,  
22 three days, he will say, Mr. Bejaoui, we will give you -- you  
23 can represent yourself. Or once I will get convicted, after I  
24 ask for the new attorney, oh, you need a new attorney --  
25 because he served his purpose. His purpose is to convict me.

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1 He has no defense.

2 THE COURT: During this trial, Mr. Dratel is your  
3 attorney.

4 MR. BEJAOU: Then you want to have Mr. Dratel listen  
5 to this trial. Because I'm at the end of this.

6 THE COURT: All right. I'm going to step off the  
7 bench, and my deputy will notify me after the panel is seated.

8 MR. DRATEL: Your Honor, just one thing. This is a  
9 scheduling thing if I could ask the Court. I don't know why,  
10 but a judge in the Eastern District has scheduled something for  
11 me tomorrow at noon. And I wrote him and said I'm on trial.  
12 He denied my request. I thought if you could maybe reach out  
13 to him and --

14 THE COURT: Who is it?

15 MR. DRATEL: Judge Kuntz, K-u-n-t-z. I don't want to  
16 delay it too much because it's a bail hearing. I couldn't get  
17 it before today. I asked him this morning and he wouldn't.

18 THE COURT: It is a bail hearing that you have  
19 requested?

20 MR. DRATEL: Yes.

21 THE COURT: And he set it down for what time?

22 MR. DRATEL: He set it down for noon tomorrow.

23 THE COURT: Can you do it at 9 a.m.?

24 MR. DRATEL: Sure.

25 THE COURT: And can you do it at 5:30 p.m.?

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1 MR. DRATEL: Sure. Either.

2 THE COURT: All right. Thank you.

3 MR. DRATEL: Thank you, your Honor.

4 THE COURT: Does he know you're on trial here?

5 MR. DRATEL: I wrote it two times in a letter, first  
6 paragraph and the last paragraph.

7 Your Honor, 5:30 would be better because there will  
8 people who have to be there for the defendant, so it might be  
9 more difficult to get them there at 9.

10 THE COURT: 5:30 or 6.

11 How long do the parties believe this case will last,  
12 this trial will last? Ms. Kovner?

13 MS. KOVNER: Your Honor, if we move very quickly, I'm  
14 hopeful that our case would finish at the end of the week.  
15 It's possible it would roll over onto Monday.

16 THE COURT: Mr. Dratel.

17 MR. DRATEL: It's hard to tell, simply because I don't  
18 know if Mr. Bejaoui plans to testify or not, but at most a day  
19 probably.

20 THE COURT: Pardon?

21 MR. DRATEL: A day or two.

22 THE COURT: It sounds like -- I'll tell the jury to  
23 set aside two weeks.

24 MR. DRATEL: Thank you, your Honor.

25 (Jury selection; adjourned to April 9, 9:15 a.m.)